

Message Text

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ACTION DLOS-06

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CG-00 CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00 EB-07

EPA-01 ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05

JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-06 OMB-01

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TO SECSTATE WASHDC 8552

C O N F I D E N T I A L USUN 3146

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT AUGUST 6

1. CONSIDERATION OF ARTICLE 7 CONCLUDED WITH STRONG STATEMENT BY ICELAND THAT FISHERIES QUESTIONS OF ALLOWABLE CATCH AND HARVESTING CAPACITY SHOULD NOT RPT NOT BE SUBJECT TO CDS AND STATEMENT BY KENYA THAT IT WILL GO ALOG WIH CDS, ALTHOUGH NOT ENTHUSIASTICALLY.

2. ON ARTICLE 8, MOST OF THE 15 SPEAKERS THOUGHT IT IS PREMATURE TO DISCUSS THE RELATIONSHIP AMONG VARIOUS PROCEDURES, ESPECIALLY BETWEEN PART I AND PART IV, UNTIL FURTHER CONSIDERATION IS GIVEN TO WHAT PROCEDURES WOULD BE EMPLOYED IN PART I AND ANNEXT II. STATEMENTS WERE THEREFORE VERY GENERAL. ON RELATIONSHIP BETWEEN SEABEDS TRIBUNAL AND THE PART IV PROCEDURES, JAPAN, AUSTRALIA, SPAIN, USSR, SWITZERLAND AND US SEEMED INCLINED TOWARD TWO TRIBUNALS WHILE
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PERU, ECUADOR, VENEZUELA, TUNISIA, AND ALGERIA SEEMED INCLINED

TOWARD ONE TRIBUNAL. ALGERIA, WHICH SPOKE FOR THE FIRST TIME, SAID THE ONE TRIBUNAL WOULD BE THE PART IV LOS TRIBUNAL.

3. ON RELATIONSHIP OF SPECIAL PROCEDURES IN ANNEX II TO THE OTHER FORA PROVIDED FOR BY ARTICLE 9, JAPAN WISHED TO LIMIT SPECIAL PROCEDURES TO QUESTIONS OF FACT; SPAIN AND PERU EXPRESSED SKEPTICISM ON THE INCLUSION OF SPECIAL PROCEDURES; VENEZUELA, AUSTRALIA, OMAN, ISRAEL AND BAHRAIN WISHED TO SIMPLIFY THE SPECIAL PROCEDURES; ECUADOR OPPOSED THE INCLUSION OF ANNEX II; SWITZERLAND AND ISRAEL QUESTIONED THE VIABILITY OF THE DISTINCTION IN ART. 8, PARA. 4 BETWEEN INTERPRETATION AND APPLICATION OF THE CONVENTION; AND SWITZERLAND, ISRAEL AND AUSTRALIA QUESTIONED WHETHER QTE HAVE DUE REGARD FOR THE FINDINGS UNQTE IN ART. 8, PARA 2(C) AND 4(C) MEANT INSTITUTION OF APPELLATE JURISDICTION WITH BINDING EFFECT ON OTHER FORUM OR NOT. ALGERIA POINTED OUT IN ADDITION THAT MANY PROCEDURES WOULD LEAD TO DIFFERING BODIES OF INTERPRETATION AND WEAKEN THE TREATY. AUSTRALIA AND US REFERRED TO THE POSSIBILITY OF ONE PROCEDURE WITH SPECIALIZED CHAMBERS, WITH US SUGGESTING THAT SAME PROBLEMS WOULD ARISE IN RELATIONSHIP BETWEEN CHAMBERS. US POINTED OUT THAT MANY LEGAL SYSTEMS INCLUDE DIFFERENT PROCEDURES FOR DIFFERENT KINDS OF DISPUTES WITH JURISDICTIONAL DISTINCTIONS BASED ON SUBJECT MATTER, LAW FACT, AND INTERPRETATION VERSUS APPLICATION, IMPLEMENTATION OR EXECUTION. AUSTRALIA POINTED OUT THAT FISHERMEN WANT EXPERT PROCEDURES, BUT EVEN AN EXPERT COMMITTEE MAY HAVE TO DEAL WITH QUESTIONS OF INTERPRETATION AND SHOULD INCLUDE LAWYERS (E.G., THE CHAIRMAN MIGHT BE TRAINED IN THE LAW).
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